

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.,

Plaintiff,

-against-

14 Civ. 6547 (CM)(JLC)

LEXINGTON INSURANCE COMPANY,

Defendant.

RESPONSE TO LEXINGTON'S MOTION FOR RECONSIDERATION

McMahon, J.:

Defendant Lexington Insurance Company has moved by letter dated July 30, 2015, for reconsideration of the court's decision of even date, on the ground that the court overlooked or misapprehended a critically important fact. The court indicated that it was unable to find a "voluntary payments clause" in the Lexington Policy, and stated that the parties had not pointed me to one. I was wrong on both counts.

While not discussed in either the moving or opposing briefs, Lexington's Reply Brief says, at page 8:

Like the policy in Smart Style, the Lexington Policy contains a standard voluntary payment provision which prohibits the insured from incurring costs without Lexington's consent (Kevane Decl. Ex. 13, §V.2.d at pg. 3656).

With this guidance, I have looked again at the policy, and there indeed it is:

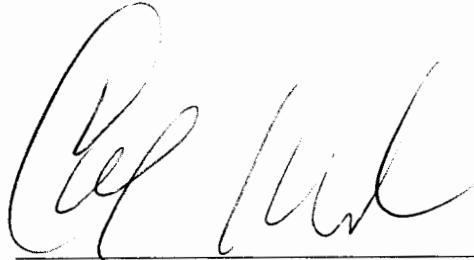
No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

I apologize to the parties, but especially to Lexington, for my error.

Today's decision is hereby withdrawn. Con Ed has three business days to weigh in with anything it might have to say on this issue. A corrected decision will issue by the end of next week.

The Clerk of the Court is directed to withdraw the decision, docketed earlier today, from the docket, in anticipation of a corrected decision.

Dated: July 30, 2015



U.S.D.J.

BY ECF TO ALL COUNSEL